BEFORE THE

Federal Communications Commission

WASHINGTON, D.C

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	RM 8535

FURTHER COMMENTS OF
TIME WARNER COMMUNICATIONS HOLDINGS, INC.

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ATTORNEYS FOR TIME WARNER
COMMUNICATIONS HOLDINGS, INC.

March 29, 1996

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Time Warner Communications Holdings, Inc. ("TWComm") hereby submits its Further Comments pursuant to the Public Notice released on March 14, 1996.[1]

I. INTRODUCTION AND SUMMARY

The passage of Section 251(b)(2) of the Communications Act[2] has effectively narrowed the subject matter of this proceeding to a single issue: whether true service provider portability is technically feasible. If it is, LECs are required by Section 251(b)(2) to provide it.

Moreover, there is now no question that in fact true service provider portability is technically feasible. The Commission should accordingly establish a deployment schedule in this proceeding.

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1 Public Notice, DA 96-358 at 1 (released March 14, 1996) (requesting comments on "how passage of the Telecommunications Act of 1996 may affect issues raised in the July Notice of Proposed Rulemaking" in this proceeding).

2 47 U.S.C. § 251(b)(2).

II. UNDER SECTION 251(b)(2), THE COMMISSION MUST REQUIRE LECS TO PROVIDE TRUE SERVICE PROVIDER PORTABILITY

A. The Commission Must Require LECs To Provide True Service Provider Portability If It Is Technically Feasible.

The Telecommunications Act of 1996 ("1996 Act") added Section 251(b)(2) to the Communications Act which requires LECs to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[3] As defined in the 1996 Act, number portability means true service provider number portability; it requires a solution that eliminates the competitive imbalances created by lack of number portability and that would be largely preserved by so-called "interim solutions" such as Remote Call Forwarding and Direct Inward Dialing.[4]

Section 251(b)(2) has therefore fundamentally transformed the Commission's review of number portability. The original NPRM in this proceeding sought comment on a wide range of issues such as whether the benefits to competition justify the cost of requiring LECs to provide any or all of the three forms of number portability (location, service or service provider) and whether

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[3] Id. The burden is placed upon all local carriers, although the FCC is authorized to forbear from imposing this burden on non-incumbent LECs. TWComm plans to offer service provider portability in its telephone service areas.

[4] See 47 U.S.C. § 153(a)(46) ("The term 'number portability' means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.")

the Commission had the jurisdiction to impose such requirements. Section 251(b)(2) has narrowed the relevant inquiry to a single question: whether true service provider portability is technically feasible. If so, the Commission not only has the jurisdiction to require LECs to provide service provider portability, it is legally obligated to do so under Section 251.[5]

The Commission no longer has the discretion to weigh the cost of implementation against the benefits of competition. The Supreme Court has specifically held that, under a statutory mandate to act "to the extent feasible," an administrative agency is prohibited from engaging in a cost-benefit analysis.[6] Indeed, a statutory requirement to act "to the extent feasible" in general confers "little administrative discretion."[7] This is because Congress itself has already defined the relationship between costs and benefits, by placing the benefits of competition from the introduction of number portability above all

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5 This is not to say, of course, that the Commission now lacks the jurisdiction to consider, if necessary or appropriate, requirements for location or service portability. However, in light of the statutory mandate that rules for service provider portability (as well as all other Section 251 requirements) be established within six months of the passage of the 1996 Act, see 47 U.S.C. § 251(d)(1), and the fact, discussed below, that implementation of such rules may not delay implementation of service provider portability, Section 251(b)(2) should have the practical effect of eliminating further consideration of location and service portability at this time.

6 See American Textile Manufacturers Institute, Inc. v Donovan, 452 U.S. 490, 509 (1981) ("Donovan").

7 Citizens To Preserve Overton Park v. Volpe, 401 U.S. 402, 411 (1971)

other considerations except those concerning technical feasibility.[8]

Indeed, a previous draft of the federal telecommunications reform legislation required telecommunications carriers to provide "telecommunications number portability, as administered by an impartial entity, as soon as technically and economically reasonable."[9] The omission of the "economically reasonable" language from the bill that was enacted into law confirms that Congress consciously decided to limit the scope of the permissible agency review to technical issues only.[10]

Incumbent LECs will probably argue that they are not required to begin deployment until technical solutions are commercially available. This argument should be rejected for at least three reasons. First, the Supreme Court has held that the

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8 See Donovan, 452 U.S. at 509 (interpreting agency discretion under Section 6(b)(5) of the Occupational Safety and Health Act, which authorizes the Secretary of Labor, in promulgating standards regulating toxic materials or harmful physical agents, to set the standard which most adequately assures, "to the extent feasible," that no employee will suffer material impairment of health or functional capacity). Previous statutory explanations of "technical feasibility" further support this view. For example, in adopting the Energy Policy and Conservation Act, Congress stated that a "determination of . . . technical infeasibility is intended to provide the narrowest possible grounds for refusing to prescribe" the required standard. H.R. Rep. No. 340 94th Cong., 1st Sess. 97 (1975).

9 S. 1822, 103d Cong., 2d Sess. § 230(c)(1)(g).

10 See Donovan, 401 U.S. at 510 ("[w]hen Congress has intended that an agency engage in cost-benefit analysis, it has clearly indicated such in intent on the face of the statute").

term "feasible" must be interpreted according to its common dictionary meaning.[11] The common definition of technically feasible does not include commercial availability. Second, within the specific experience of telecommunications, there is ample precedent for the fact that something can be technically feasible even though it is not commercially available. For example, equal access was not commercially available before divestiture, but, as subsequent deployment proved, it was clearly technically feasible.[12] This was also the case with 800 number portability.[13] Finally, the argument, if accepted, would lead to absurd results. As the major class of buyers of number portability solutions, LECs have the unilateral ability to bring about its commercial availability. Vendors will not sell it until it is in fact demanded. Accepting the equivalence of technical feasibility and commercial availability would thus leave regulators paralyzed: they could not require deployment of a technology until the entity that stands to lose the most from its deployment cooperated in making it commercially available. This is clearly not what Congress intended.

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11 See id., 452 U.S. at 508-09 (relying on the Webster's Third International Dictionary of the English Language definition of "feasible:" "capable of being done, executed, or effected.")

12 See United States v. AT&T, 552 F. Supp. 131, 233 (D.D.C. 1982).

13 See Provision of Access for 800 Service, 6 F.C.C.R. 5421 (1991).

B. True Service Provider Number Portability Is Technically Feasible.

While Section 251(b)(2) permits only consideration of technical feasibility before true service provider portability must be provided, even the latter issue has essentially already been resolved. Thus, in a Declaration submitted as an attachment to these Comments, Dan Engleman, the Director of Switching Technology at TWComm, articulates the virtual consensus view of the industry: true service provider portability is technically feasible.[14]

Moreover, as Mr. Engleman explains, the industry consensus reached in the Illinois Commerce Commission's ("ICC's") number portability workshop for Chicago LATA 358 has confirmed the technical feasibility of true service provider portability. In the ICC workshop, representatives from every sector of the telecommunications industry involved in the development and deployment of true service provider portability (including Ameritech, Centel and GTE)[15] agreed to adopt Location Routing

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[14] See Declaration of Danny G. Engleman ("Engleman Declaration"). Mr. Engleman is exceptionally well qualified to assess the viability of the current technical solutions. He was the leading member of the TWComm team that implemented Remote Call Forwarding in Rochester, New York, and he acts as the TWComm interface with network equipment suppliers of number portability equipment. He represents TWComm on the Industry Numbering Committee and is responsible for TWComm's participation in state number portability workshops. He also has over sixteen years of experience as a telecommunications architect.

[15] See Illinois Bell Telephone Company et al. Joint Petition for Approval of Stipulation and Agreement Relating to the Implementation of Local Number Portability, Docket No. 96-0089, Joint Exhibit 1.1 at 2.

Number ("LRN") as the area solution.[16] More importantly, they also reached consensus resolutions on all of the relevant technical obstacles to the deployment of LRN.[17] Requirements were developed for switching, operator services, signal transfer points ("STPs"), service control points ("SCPs"), billing and rating as well as for service management systems ("SMS"). In light of this progress, the ICC has ordered the deployment of AT&T's LRN in the Chicago LATA 358 by July 1, 1997 in accordance with the agreements reached by the members of the workshop.[18]

Other states have followed the ICC's lead. Industry committees in Maryland, California and Georgia have relied on the technical solutions developed in Illinois to recommend the adoption of LRN on schedules similar to the one adopted by the ICC.

Thus, the central issue left unresolved by Section 251(b)(2) has been settled by the industry: true service provider portability is technically feasible.

III. THE COMMISSION SHOULD IMPLEMENT A DEPLOYMENT SCHEDULE FOR TRUE SERVICE PROVIDER PORTABILITY IN THIS PROCEEDING.

A simple finding by the FCC that service provider portability is technically feasible is, by itself, not enough to

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16 Id. at 3.

17 See Engleman Declaration at 2.

18 See Approval of a Stipulation and Agreement to Implement Local Number Portability in Market Service 1, Docket No. 96-0089, Order (released March 13, 1996).

fulfill the agency's obligations under the statute. The Commission must also implement a strict deployment schedule that requires LECs to provide service provider portability. Without such a schedule, the Commission will relinquish control over the implementation process to the states. As described below, states have an important implementation role. But number portability will be much more effective if implementation is guided and coordinated by the Commission.[19]

The implementation schedule adopted by the Commission should take place in three phases.[20] First, the Commission should establish baseline criteria with which all true number portability solutions must comply.[21] The Commission should also

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19 Moreover, the BOC interLATA entry provisions established by the 1996 Act make it especially urgent that the Commission establish an implementation schedule in this proceeding. Under Section 271(c)(2)(B) of the Communications Act, 47 U.S.C. § 271(c)(2)(B), BOCs must fully comply with Commission number portability regulations before they may offer in-region interLATA service. The earlier the Commission establishes a service provider implementation schedule, the more leverage it will have to require BOCs to fully deploy true service provider solutions as a prerequisite to in-region interLATA entry.

20 As explained in TWComm's initial Comments, the Commission should require LECs to provide "interim solutions" free of charge until true service provider portability is actually deployed. See Comments of Time Warner Communications Holdings, Inc. at 21-22.

21 All solutions should comply with the following requirements (many of which are included in the statutory definition of number portability): (1) ported subscribers must be able to keep their original telephone numbers, (2) solutions should have transparent interfaces with database solutions, (3) either IN or AIN triggers must be used to access the database (in cases where a LEC has neither IN nor AIN, the Commission should require the deployment of IN triggers), (4) all switch-based functions, including CLASS functions,

establish a cost recovery scheme that results in all telecommunications carriers bearing the cost of implementation on a "competitively neutral basis," as required by Section 251(e)(2) of the Communications Act.[22] As explained in TWComm's initial Comments, such a mechanism should require carriers to absorb their own costs of implementation and should recover common costs based on the number of subsciber lines in a particular region.[23]

Second, the Commission should delegate to the states the authority to implement true service provider portability solutions in compliance with its baseline criteria. Thus, by no later than March 31, 1997, each state should publish a Portability Implementation Order describing the manner in which the state will implement number portability. Each such Order should include: (1) a description of the service provider technology chosen for the state, (2) a list of companies involved in the development and provision of the service (vendors, IXCs, LECs, CLECs and others), (3) the locations (by central office or region) in which the state has ordered initial deployment, and (4) a schedule for deployment which includes dates certain for the establishment of operator services, switching, SCP, STP,

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should function properly, (5) the competitive LEC ("CLEC") should be able to charge IXCs for access to its facilities, (6) a ten digit routing code should be used to route calls from the LEC to the CLEC, and (7) all solutions should conform with a national N-1 call processing scenario.

22 47 U.S.C. § 251(e)(2).

23 See Comments of Time Warner Communications Holdings, Inc. at 22-23.

operations, and the selection of an SMS vendor. The state Portability Implementation Orders should also require LECs to provide the service by no later than December 31, 1997.

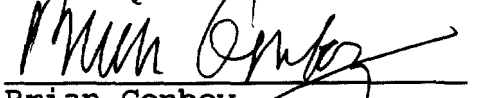
This implementation schedule tracks (although is more generous than) the deadlines adopted in the ICC workshop. States should be encouraged to continue to rely on the technical solutions devised in that context as a baseline for their implementation proceedings. There should be a strong presumption that, in light of the ICC workshop solutions, all states will be able to meet the deadlines described above.

Finally, in the third phase of implementation, the Commission should require each LEC to provide true number portability within 6 months after a bona fide request.

CONCLUSION

The Commission should find that true service provider portability is technically feasible, and it should adopt an implementation schedule that is consistent with these Comments.

Respectfully submitted



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ATTORNEYS FOR TIME WARNER COMMUNICATIONS HOLDINGS, INC.

March 29, 1996

DECLARATION OF DANNY G. ENGLEMAN

I, Danny G. Engleman, do hereby declare as follows:

I am the Director of Switching Technology at Time Warner Communications Holdings, Inc. ("TWComm"). In this capacity, I am responsible for the development of switched services architectures and product development for TWComm. I also oversee TWComm's participation in number portability technical workshops conducted by state regulatory commissions and will oversee the eventual deployment of number portability solution in TWComm's networks. I have already participated extensively in the deployment of Remote Call Forwarding in Rochester, New York. I also act as the TWComm interface with network equipment suppliers on various matters, including number portability. Finally, I am a member of the Industry Numbering Committee, a private industry group that studies number portability solutions.

Prior to my current position with TWComm, I worked as a Network Architect on the US West Advanced Technologies Technical Staff. In that position, I participated in the design of key service architectures such as Information Gateway, Switched Multi-Megabit Data Service, Broadband ISDN and Personal Communications Services. Prior to my position at US West, I worked as a Manager for Instruction and Development at the Bellcore Technical Education Center in Lisle, Illinois. In that position, I taught numerous classes on a wide range of technical issues.

Based on my evaluation of the current number portability solutions, on my participation in state number portability workshops, on my extensive discussions with network equipment suppliers and on my broad experience as a telecommunications architect, it is my conclusion that it is technically feasible to deploy a number portability solution by July 1, 1997 that will enable users of telecommunications services to retain, at the same location, their existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

The industry consensus reached in the number portability workshop conducted by the Illinois Commerce Commission ("ICC") confirms the validity of this position. The ICC workshop included representatives from every sector of the telecommunications industry involved in the development and deployment of number portability: local exchange carriers (Ameritech, GTE and Centel), long distance carriers (AT&T, MCI and Sprint), competitive local exchange carriers (Time Warner, MCI Metro, AT&T, CSG, MFS and Teleport), switch vendors (Ericsson, Lucent, Nortel and Siemens), software developers (Bellcore, DSC, Ericsson, Lucent, Nortel and Tandem) as well as private consultants and state regulators from outside of Illinois. The primary goal of the workshop was to choose a true number portability solution for Chicago LATA 358 (i.e., one with the capabilities described in the previous paragraph) and to establish an implementation schedule.

The members of the workshop unanimously chose AT&T's Location Routing Number ("LRN") approach as the true number portability solution for LATA 358. Moreover, during the workshop, the industry representatives agreed on solutions for every major technical requirement for the implementation of LRN. Those requirements are as follows:

Switching: Ericsson, Lucent, Nortel and Siemens participated in the development of the switch requirements for LRN. Final switch requirements were announced on February 12, 1996. These vendors have committed to developing software for end office switches, access tandems and toll tandems. Software is scheduled to be available for deployment by July 1, 1997.

Operator Services: Final operator service requirements were announced on March 4, 1996.

Signal Transfer Point ("STP")/Service Control Points ("SCP"): Bellcore, DSC, Ericsson, Lucent, Nortel and Tandem have agreed on the preliminary requirements for these network elements. The final requirements are scheduled to be released on April 1996. Although the final requirements have not yet been released, all of the major technical issues for true number portability regarding STPs and SCPs have been resolved.

Billing and Rating: All Carrier Access billing issues have been resolved and will be incorporated into the switching requirements. Final Billing and Rating requirements were announced on February 12, 1996.

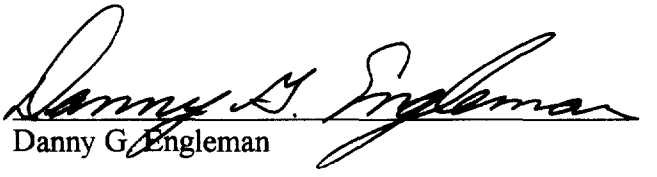
Service management System ("SMS"): Final SMS requirements were announced and an RFP released to the industry on February 7, 1996. Several vendors (names have not yet been released) responded to the RFP on March 18, and the vendor selection is scheduled to be completed by April 15, 1996.

In addition to these technical issues, there are several non-technical operations issues that are currently being resolved. For example, Maintenance and Provisioning requirements are currently being written. They are scheduled to be adopted in final form by June 30 and August 31 respectively.

The ICC workshop has demonstrated that there are no existing technical obstacles to deploying true number portability. Moreover, the technical solutions developed for LATA 358 are readily applicable to other areas. For example, both Georgia and Maryland have adopted LRN and are using the requirements, technical solutions and implementation schedules developed in the ICC workshop as the basis for their own number portability workshops.

Any remaining technical issues involving true number portability do not relate to feasibility. There are a number of available technical solutions, and parties may disagree as to which solution is optimal (although, as demonstrated in the Illinois and other state workshops, such disagreement is quite rare), but there cannot be any reasonable disagreement as to the technical <u>feasibility</u> of true number portability.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge and belief, true and correct. Executed on March 28, 1996.



Danny G. Engleman